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Chairman: Mr. Ballesteros (Vice-Chairman) ..... (Costa Rica)

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In the absence of the Chairman, Mr. Ballesteros (Costa Rica), Vice-Chairman, took the Chair.

The meeting was called to order at 3.30 p.m.

Agenda item 68: Report of the Human Rights Council (*continued*)

Draft resolution A/C.3/61/L.17: International Convention for the Protection of All Persons from Enforced Disappearance

1. **Mr. Khane** (Secretary of the Committee) said that, under the terms of paragraph 2 of the draft resolution, the General Assembly would adopt and open for signature, ratification and accession the International Convention for the Protection of All Persons from Enforced Disappearance. Article 26, paragraph 7, of the draft Convention stated that the Secretary-General would provide the necessary means, staff and facilities for the effective performance of the Committee on Enforced Disappearances to be established under the Convention. Since 20 instruments of ratification or accession needed to be deposited before the Convention could enter into force, the draft resolution was not expected to have any programme-budget implications for the 2006-2007 biennium. If the Convention were to come into force during the 2008-2009 biennium, it would entail total net estimated biennial requirements of $1,880,600, the breakdown of which was shown in paragraph 8 of the Secretary-General's report entitled "Revised estimates resulting from resolutions and decisions adopted by the Human Rights Council at its first and second special sessions in 2006" (A/61/530). Upon the Committee's establishment, the estimated requirements for its activities would be considered in the context of the proposed programme budget for 2008-2009.

2. **Mr. Vandeville** (France), introducing the draft resolution on behalf of the original sponsors, recalled that the President of the Human Rights Council, speaking before the Committee the previous week, had described the draft Convention as a legal instrument of very high quality which had been adopted by consensus by the Council. The draft resolution followed exactly the same wording as that recommended by the Council for adoption, except for the replacement in the English version of paragraph 1 of the word "Hails" by "Acknowledges". He announced that, if the draft resolution were adopted by the Committee, the Convention would be opened for signature during a ceremony to be held in Paris, in principle on 6 February 2007. Adoption of the draft resolution would long redound to the credit of the Committee and of the United Nations as a whole.

3. The original 63 sponsors had been joined by Afghanistan, Albania, Angola, Armenia, Azerbaijan, Bosnia and Herzegovina, Botswana, Cambodia, Canada, the Central African Republic, the Comoros, Costa Rica, Côte d'Ivoire, the Democratic Republic of the Congo, Denmark, Dominica, the Dominican Republic, Eritrea, Fiji, Guatemala, Japan, Jordan, Kenya, Lebanon, Liberia, Mauritania, Moldova, Montenegro, Nicaragua, Panama, Senegal, Serbia, Sierra Leone, Sweden, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Ukraine and Uruguay. All the sponsors had recommended that the draft resolution should be adopted by consensus.

4. **Mr. Khane** (Secretary of the Committee) announced that Indonesia and Lesotho had also joined the sponsors.

5. **Ms. Zhang** Dan (China) said that her delegation supported the adoption of the draft resolution by consensus, subject to the correction of a number of technical and linguistic errors in the Chinese version of the draft Convention which, if they remained, would impede China's ratification and implementation of the instrument. Her delegation had submitted a note verbale containing a revised version of the text in Chinese. She requested confirmation that that revised version would replace the current version in Chinese.

6. **Mr. Khane** (Secretary of the Committee) said that he had taken note of the statement by the representative of China. He confirmed that he had received the note verbale, which would be transmitted to the competent services.

7. *Draft resolution A/C.3/61/L.17 was adopted without a vote.*

8. **Mr. Adsett** (Canada), explaining his delegation's position, said that his country had participated actively in the negotiation of the draft Convention, whose adoption it supported. Canada had joined the consensus on the establishment of a new body, although it would have preferred the Human Rights Committee to have been assigned the related monitoring functions. He emphasized that the definition in article 2 and all references in the draft Convention to crimes or

offences should be interpreted in the light of the element of criminal intent required under domestic law for any criminal offence. Articles 5 and 6 must be interpreted in accordance with international law, including the Rome Statute of the International Criminal Court.

9. The provision in article 7 regarding the possibility of mitigating circumstances could not be interpreted to mean an effective amnesty that would grant impunity to violators, who must be punished appropriately. Article 8 on statutes of limitations must be interpreted as being subject to international law and should not result in impunity for offenders; no such statutes were permitted under international law for any enforced disappearance that constituted a crime against humanity. Article 12, paragraph 3, must be interpreted as permitting States to ensure access by investigating authorities to relevant documentation and other information not in the control of the State, upon prior authorization of a judicial authority, where necessary. The provisions in article 24 on reparation must be interpreted in accordance with international law, including the law of sovereign immunity.

10. **Mr. Ceinos-Cox** (United States of America), explaining his delegation's position, said that his country had been an active participant in all the meetings of the working group to draft a Convention on the Protection of All Persons from Enforced Disappearance. It had thus been able to provide its understanding of the intent of States participating in the Working Group on a number of core issues and to express its concerns about the final text. He reaffirmed the statement made by the United States delegation before the Human Rights Council in that connection in June 2006, reproduced in A/HRC/1/G/1.

11. **Mr. Sen** (India), explaining his delegation's position, said that the existing body of international human rights law and humanitarian law, backed by adequate political will and resources, provided a comprehensive framework to tackle the phenomenon of enforced disappearances. His Government had therefore not been convinced about the need for a separate Convention or a new monitoring body; an optional protocol to the International Covenant on Civil and Political Rights would have been a better solution. The definition of enforced disappearance contained in the proposed text allowed a standard of proof different from that established by the Rome Statute for the same crime.

12. The notion of intent should have been more clearly incorporated in that definition, which should also have included non-State actors. His delegation had nevertheless joined the consensus, on the understanding that the proposed instrument would allow national jurisdictions to criminalize enforced disappearance in accordance with their respective legal systems and constitutional procedures. While in a common-law system such as that of India, there was no statutory right to compensation, victims of human rights abuses were regularly granted remedy and compensation in his country.

13. **Mr. Lee-Smith** (United Kingdom), explaining his delegation's position, said that the placing of a person outside the protection of the law was an important element of the definition of enforced disappearance contained in article 2 of the draft Convention. His delegation understood the term "outside the protection of the law" to mean that the person's deprivation of liberty or detention was not within the scope of relevant legal rules or that those rules were not compatible with applicable international law. Accordingly, his Government understood article 20, which permitted restrictions to the right to information, to apply to all situations where a person was not outside the protection of the law or, in other words, within the State's domestic legal rules governing deprivation of liberty or detention, consistent with applicable international law.

14. It understood article 43 to mean that international humanitarian law remained the lex specialis in situations of armed conflict and other situations to which such law applied, so as to ensure that, where applicable, the relevant provisions of international humanitarian law would take precedence over any other provisions contained in the draft instrument. His Government's understanding of article 25, paragraph 4, was that it did not entail an obligation to provide a legal procedure that would lead to an automatic review of adoption, nor did it require the automatic annulment of an adoption stemming from an enforced disappearance, but merely the existence in States parties of a procedure to apply for review of an adoption covered by that article.

15. **Ms. Banzon** (Philippines), explaining her delegation's position, said that the draft Convention marked a significant development in international human rights and humanitarian law and made up for the lack of a treaty that explicitly banned practices

leading to enforced disappearances and ensured the right of families to the truth. Her delegation had joined the consensus on the understanding that the draft instrument would not prevent a State from criminalizing the offence, in accordance with its national legislation. Accordingly, the State would be able to assign responsibility not only to its agents but also to non-State actors and groups outside its effective control. It nevertheless remained the responsibility of the State to provide protection. Her Government would also have liked the definition of enforced disappearance to reflect the fact that a significant proportion of acts leading to such disappearances were committed by non-State conflict groups. Lastly, it was understood that all three elements referred to in article 6, paragraph 1 (b), had to exist together in order for criminal liability to be assigned.

16. **Ms. Graham** (New Zealand), explaining her delegation's position, said that it was her Government's understanding that nothing in the draft Convention should be considered to undercut or reinterpret existing international law even though, in its view, some of its provisions departed from already established international criminal law. The definition of enforced disappearance as a crime against humanity was one such departure. New Zealand would accordingly interpret the relevant article in a manner consistent with its understanding of existing international law. Similarly, it would interpret article 6 in accordance with well-established international law on command responsibility of civilian superiors and military commanders, despite the different language used. She regretted that there were no specific provisions on standards of responsibility for military commanders. However, her delegation understood paragraph 2 of article 6 as an acknowledgment of the higher standard of responsibility of military commanders under international law, particularly in cases of enforced disappearance.

17. **Mr. Braad** (Denmark), explaining his delegation's position, said that his Government did not know yet whether it would be able to ratify the new instrument. That would depend on a closer analysis of the relationship between the Convention and article 3 of the European Convention on Human Rights.

18. **Mr. Anzola** (the Bolivarian Republic of Venezuela), explaining his delegation's position, said that the Venezuelan Constitution and penal code contained effective, rigorous measures to combat enforced disappearances. Perpetrators did not receive impunity or amnesty. His country had been a party to the Inter-American Convention on Enforced Disappearances since 1994.

19. **Ms. Otani** (Japan), explaining her delegation's position, said that Japan associated itself with the United Kingdom in regard to the elements contained in the definition of enforced disappearance. A key element of the Convention was the definition of enforced disappearance as a crime.

20. **Mr. Vandeville** (France) said that the adoption by consensus of the draft Convention, which had 103 sponsors, was an encouraging sign. Since 1980, 15,000 cases of enforced disappearance had been recorded in 90 countries.

Agenda item 65: Elimination of racism and racial discrimination (*continued*)

(a) Elimination of racism and racial discrimination (*continued*) (A/C.3/61/L.48 and L.49)

Draft resolution A/C.3/61/L.48: Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance

21. **Mr. Nikiforov** (Russian Federation) introducing the draft resolution, said that an increase in the activity of neo-Nazis and skinheads, among other such groups, was cause for profound concern. It was unacceptable to make the Nazis into heroes and to whitewash crimes of the Waffen SS. The unveiling of monuments to the Nazis and the holding of days of mourning to commemorate the liberation from the Nazis were phenomena which testified to the relevance of the current draft resolution. The draft text was a thematic resolution oriented toward cooperation and dialogue.

Draft resolution A/C.3/61/L.49: International Convention on the Elimination of All Forms of Racial Discrimination

22. **Ms. Rondeux** (Belgium), introducing the draft resolution, said that Andorra, Cameroon, Canada, Cape Verde, Chile, Ecuador, Guatemala, Japan, Namibia, Nigeria, Pakistan, Serbia, Switzerland, Timor-Leste and Ukraine had joined the sponsors. The draft resolution underscored the importance of universal adherence to and full implementation of the

Convention, noted with satisfaction the work carried out by the Committee on the Elimination of Racial Discrimination and stressed the obligations of States parties under the Convention, particularly with regard to the submission of periodic reports. Lastly, the sponsors hoped that, as in the past, the draft resolution would be adopted without a vote.

(b) Comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action (*continued*) (A/C.3/61/L.53)

Draft resolution A/C.3/61/L.53: Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action

23. **Ms. Hoosen** (South Africa), introducing the draft resolution on behalf of the Group of 77 and China, said that a lack of political will to advance the global anti-racism agenda as expressed in the Durban Declaration and Programme of Action was hampering efforts to combat racism, resulting in a resurgence of racism in many parts of the world. While the draft resolution was based on an earlier resolution from December 2005, recent trends would be noted in efforts to address challenges.

24. **Mr. Khane** (Secretary of the Committee) said that the Russian Federation had joined the sponsors of the draft resolution.

Agenda item 66: Right of peoples to self-determination (*continued*) (A/C.3/61/L.46 and L.50)

Draft resolution A/C.3/61/L.46: Universal realization of the right of peoples to self-determination

25. **Mr. Hayee** (Pakistan), introducing the draft resolution, said that the right to self-determination was the foundation upon which the system of international relations was based and was the most basic collective right of peoples and nations, without which individual human rights could not be exercised. That right had been reaffirmed at the Millennium Summit, the United Nations 2005 World Summit and other major international conferences. Exercise of the right to self-determination had helped millions of people throughout the world in search of liberation from colonialism and apartheid. Lastly, he pointed out that Bahrain, Brunei Darussalam, Kuwait, Panama, Nigeria and South Africa had joined the sponsors.

Draft resolution A/C.3/61/L.50: Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

26. **Mr. Amorós Núñez** (Cuba), introducing the draft resolution, said that some States continued to use mercenaries to overthrow the Governments of States Members of the United Nations, especially those of developing countries, and to oppose those fighting for just national causes. The draft resolution called upon States to exercise vigilance in regard to the threat posed by the activities of mercenaries, keeping in mind the new legal definition of a mercenary proposed by the Special Rapporteur on use of mercenaries as a means of impeding the right of peoples to self-determination in his report to the sixtieth session of the Commission on Human Rights. Benin, Botswana, Burundi, the Democratic People's Republic of Korea, Egypt, Eritrea, Iran (Islamic Republic of), Lesotho, Madagascar, Myanmar, Namibia, Sierra Leone, South Africa, Swaziland, the Syrian Arab Republic, the United Republic of Tanzania, Viet Nam, Zambia and Zimbabwe had joined the sponsors.

Agenda item 67: Promotion and protection of human rights (*continued*)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/C.3/61/L.19, L.21, L.22, L.23, L.24, L.26, L.27, L.28, L.29, L.33, L.34 and L.35)

Draft resolution A/C.3/61/L.19: Missing persons

27. **Ms. Adjalova** (Azerbaijan), introducing the draft resolution, said that the following revisions had been made to the text. In the first line of the third preambular paragraph, the word "relevant" should be inserted before "resolutions". In the sixth preambular paragraph, the words "among others" should be added to the end of the last line. In the ninth preambular paragraph, "welcomes" should be replaced by "takes note with appreciation of", and "ongoing" should be inserted before "regional". In the second line of paragraph 1, the words "where applicable" should be

inserted before "in the Additional Protocols". In the last line of paragraph 9, the phrase "working groups" should be added after "commissions". Finally, paragraph 11 should be deleted.

28. She announced that Afghanistan, Bangladesh, Belarus, Belgium, Costa Rica, Croatia, the Democratic Republic of the Congo, Ecuador, Fiji, Jamaica, Kazakhstan, Kyrgyzstan, Mexico, Qatar, Senegal, Serbia, Spain, Switzerland, the Syrian Arab Republic, Tajikistan, Ukraine and Uzbekistan had joined the sponsors.

29. **Mr. Gustafik** (Secretary of the Committee) said that Benin, Cameroon, Honduras and Kenya had also joined the sponsors of the draft resolution.

Draft resolution A/C.3/61/L.21: Human rights and extreme poverty

30. **Ms. Tincopa** (Peru) introduced the draft resolution and announced that Armenia, Croatia, Estonia, Ethiopia, Finland, France, Honduras, Kuwait, Serbia, Slovakia, Slovenia, Spain, Thailand, the former Yugoslav Republic of Macedonia and the United Kingdom had joined the sponsors. The eradication of poverty and extreme poverty was the major challenge facing the world, especially the developing world, and was central to the commitments made at the 2005 World Summit.

31. **Mr. Gustafik** (Secretary of the Committee) said that Albania, Angola, Azerbaijan, Bangladesh, Benin, Burkina Faso, Cape Verde, Colombia, the Congo, Djibouti, Ecuador, Ghana, Madagascar, Malawi, Mali, Moldova, Monaco, Morocco, Nigeria, Rwanda, South Africa and Ukraine had joined the sponsors of the draft resolution.

Draft resolution A/C.3/61/L.22: Subregional Centre for Human Rights and Democracy in Central Africa

32. **Mr. Nyamulinda** (Rwanda), introducing the draft resolution, said that the Central African subregion had been a subject of concern to the international community for many years. The objective of the Subregional Centre for Human Rights and Democracy in Central Africa was to promote stability, peace and development in the subregion. Ghana, India and Madagascar had joined the sponsors of the draft resolution.

33. **Mr. Gustafik** (Secretary of the Committee) said that Belarus, Burkina Faso and South Africa had also joined the sponsors.

Draft resolution A/C.3/61/L.23: Composition of the staff of the Office of the United Nations High Commissioner for Human Rights

34. **Mr. Amorós Núñez** (Cuba), introducing the draft resolution, said that in addition to the sponsors listed in the document, China, the Democratic Republic of the Congo, Ecuador, Egypt, El Salvador, Gabon, India, Kenya, the Lao Peoples' Democratic Republic, Lebanon, Lesotho, Mauritania, Myanmar, Namibia, Pakistan, Saudi Arabia, South Africa, Swaziland, the Syrian Arab Republic, Yemen and Zambia had joined the sponsors. Four of the five United Nations geographical groups were represented among the sponsors of the draft resolution, which sought to redress the specific geographic imbalance of the Office of the United Nations High Commissioner for Human Rights.

35. **Mr. Gustafik** (Secretary of the Committee) said that Algeria, Bhutan, Ghana, Nepal and the Russian Federation had joined the sponsors of the draft resolution.

Draft resolution A/C.3/61/L.24: Promotion of a democratic and equitable international order

36. **Mr. Amorós Núñez** (Cuba), introducing the draft resolution, said that Namibia had joined the sponsors. The objective of the draft resolution was to call attention to the close links between economic and social conditions and the enjoyment of human rights.

37. **Mr. Gustafik** (Secretary of the Committee) said that Cameroon, Honduras, South Africa and Uganda had joined the sponsors of the draft resolution.

Draft resolution A/C.3/61/L.26: Respect for the right to universal freedom of travel and the vital importance of family reunification*

38. **Mr. Amorós Núñez** (Cuba), introducing the draft resolution, said that the family was the basic unit of society; therefore the draft resolution had enormous relevance to the work of the Committee in the areas of migration and the family.

39. **Mr. Gustafik** (Secretary of the Committee) said that the Congo and Ethiopia had joined the sponsors of the draft resolution.

Draft resolution A/C.3/61/L.27: The right to food

40. **Mr. Amorós Núñez** (Cuba) introduced the draft resolution and drew attention to its paragraph 10, which called attention to the difficulties that indigenous groups faced in realizing the right to food. The following delegations had joined the sponsors of the draft resolution: Afghanistan, Andorra, Angola, Antigua and Barbuda, Armenia, Benin, Brazil, Burundi, China, the Comoros, the Congo, Croatia, Djibouti, Dominica, Eritrea, Fiji, France, the Gambia, Georgia, Grenada, Guinea, Guyana, Haiti, Honduras, Japan, Kuwait, the Lao Peoples' Democratic Republic, Lesotho, Liberia, the Libyan Arab Jamahiriya, Malawi, Mauritania, Mauritius, Mexico, Moldova, Mozambique, Myanmar, Nepal, the Niger, Pakistan, the Philippines, Romania, Rwanda, Senegal, Swaziland, Togo, Turkmenistan, Uruguay and Uzbekistan.

41. **Mr. Gustafik** (Secretary of the Committee) said that Albania, Bhutan, Burkina Faso, Cameroon and Timor-Leste had also joined the sponsors.

Draft resolution A/C.3/61/L.28: Combating defamation of religions

42. **Ms. Adjalova** (Azerbaijan) introduced the draft resolution on behalf of the States Members of the United Nations that were members of the Organization of the Islamic Conference. Drawing attention to some revisions in the text, she said that the sixteenth and seventeenth preambular paragraphs had been merged to read: "*Deeply alarmed* at the rising trends to condone discrimination based on religion and faith through intellectual and ideological validation, as well as at the rise of some national policies and laws that stigmatize groups of people belonging to certain religions and faiths under a variety of pretexts relating to security and illegal immigration,". Paragraph 9 had been revised to read: "*Emphasizes* that everyone has the right to freedom of expression which should be exercised with the responsibilities and limitations as provided by law and necessary for respect of the rights or reputations of others, protection of national security or of public order, public health or morals and respect for religion and belief;". In paragraph 16, the phrase "as part of its mandate" should be deleted from the first line.

43. **Mr. Gustafik** (Secretary of the Committee) said that Cameroon had joined the sponsors of the draft resolution.

Draft resolution A/C.3/61/L.29: Protection of migrants

44. **Ms. Olivera** (Mexico), introducing the draft resolution on behalf of the original sponsors and also Mali, said that Bangladesh, Benin, Chile, the Democratic Republic of the Congo, Ecuador, El Salvador, Ethiopia, the Gambia, Guatemala, Honduras, Kenya, Morocco, the Niger, Nigeria, Paraguay, Peru, the Philippines, Saint Vincent and the Grenadines and Senegal had joined in sponsoring the draft resolution. The text had been streamlined to focus on new developments relating to the protection of migrants. The goal was to address issues that required special attention to ensure that the resolution would have greater impact.

45. In that regard, it drew special attention to the High-level Dialogue on International Migration and Development, which recognized that migration, development and human rights were intrinsically connected. Given the global nature of the migratory phenomenon, international cooperation and dialogue were required to protect the rights of migrants. She said negotiations on the text were ongoing and expressed the hope that the draft resolution would be adopted without a vote as in previous years.

46. **Mr. Gustafik** (Secretary of the Committee) said that Argentina, Belize, Burkina Faso, Cape Verde, the Congo, Ghana and Kyrgyzstan had joined in sponsoring the draft resolution.

Draft resolution A/C.3/61/L.33: Enhancement of international cooperation in the field of human rights

47. **Mr. Amorós Núñez** (Cuba), introducing the draft resolution on behalf of the States Members of the United Nations that are members of the Movement of Non-Aligned Countries, said that the text reaffirmed the commitment to promote international cooperation as set forth in the Charter of the United Nations. It urged all actors on the international scene to build an international order based on inclusion, justice, equality, equity, human dignity and mutual understanding. It requested the Secretary-General, in collaboration with the United Nations High Commissioner for Human

Rights, to consult with States and intergovernmental and non-governmental organizations on ways of enhancing international cooperation and dialogue for the promotion and protection of human rights. Lastly, he hoped that the draft resolution would be adopted by consensus as evidence of the commitment to work for genuine cooperation in the field of human rights and called on Member States to support it.

Draft resolution A/C.3/61/L.34: The right to development

48. **Mr. Amorós Núñez** (Cuba), introducing the draft resolution on behalf of the States Members of the United Nations that are members of the Movement of Non-Aligned Countries, said that the resolution drew inspiration from the Declaration on the Right to Development as well as the Vienna Declaration and Programme of Action, which confirmed that the right to development was an inalienable human right. The draft resolution recognized that poverty was a multifaceted problem that required a multifaceted approach in addressing economic, political, social, environmental and institutional concerns at all levels. It called on the Human Rights Council to promote sustainable development and the achievement of the Millennium Development Goals.

49. It endorsed the conclusions and recommendations of the Working Group on the Right to Development of the Commission on Human Rights and called for their immediate, full and effective implementation by the Office of the United Nations High Commissioner for Human Rights. It emphasized the importance of the decisions contained in Human Rights Council resolution 2006 I/4 and called on the Council to agree on a programme that would elevate the right to development to the same level as all other human rights and fundamental freedoms recognized in the human rights instruments. Lastly, he said that negotiations on the draft resolution were ongoing and urged all delegations to support it.

Draft resolution A/C.3/61/L.35: Human rights and unilateral coercive measures

50. **Mr. Amorós Núñez** (Cuba) introducing the draft resolution on behalf of the States Members of the United Nations that are members of the Movement of Non-Aligned Countries, said that the draft resolution urged all States to refrain from adopting unilateral measures that violated international law and the Charter and that prevented people from enjoying their full human rights. It requested that the resolution should be given priority in the report of the United Nations High Commissioner for Human Rights to the General Assembly. Lastly, it requested the Secretary-General to continue to collect the views of Member States on the negative effects of unilateral coercive measures on their populations and to submit an analytical report thereon to the General Assembly at its sixty-second session. Given the importance of the subject under discussion, he urged all members present to vote in favour of the draft resolution.

The meeting rose at 5.40 p.m.